

of the land, to protect his property, until the sum ascertained shall be paid, would justify the using the land, and at the same time withholding payment, would, in my opinion, be pushing the provision of the section in question far beyond the intention of the legislature.

If this position can be maintained, then any proceeding, legal or equitable, which the proprietors of the land condemned may adopt to protect it from injury until the value ascertained by the inquisition is paid, will be an excuse for not paying, whilst the company will be at liberty to proceed in the construction of the canal without interruption. Certainly the neglect to pay, when the sum is ascertained, is the fault of the company, of which the consequences should be visited upon them.

The principle settled by the Court of Appeals, in the case of the *Canal Company vs. Rail Road Company*, 4 G. & J., 1, is, that every law which is to wrest from an individual his property without his consent, must be strictly construed; that is, must receive a construction which will work as little injury as possible to the individual, consistently with the great object of public utility, for which, alone, this high sovereign power can be exerted. My construction of this section, is, that it gives to the canal company, the temporary right to enter upon the land of individuals, with whom they cannot agree, and proceed with their work, during the pendency of such proceedings, whether by writ of *ad quod damnum*, or otherwise, as may be necessary to give them the title in the mode authorized by their charter; but, that after such proceedings have been concluded by the inquisition of the jury, and the affirmation of that inquisition by the court, the temporary privilege given by the act is at end, and they may be restrained by injunction, if an attempt is made to carry it further. And such, unquestionably, was the opinion of Chancellor Kent, in the case already referred to, and in the other case cited in the 2d vol. of his Com., 340, in the note.

I take it, therefore, as clear, that after the jury in this case, had fixed the amount to be paid to these complainants, and